

## **EXHIBIT 123**

**Students for Fair Admissions, Inc. v. President and Fellows of  
Harvard College, et al., No. 14-14176-ADB, U.S. District Court,  
District of Massachusetts, Transcript of Bench Trial – Day 6,  
October 22, 2018**

## 1 UNITED STATES DISTRICT COURT

## 2 DISTRICT OF MASSACHUSETTS

3  
4 STUDENTS FOR FAIR ADMISSIONS, INC.,

5 Plaintiff,

Civil Action  
No. 14-14176-ADB

6 v.

October 22, 2018

7 PRESIDENT AND FELLOWS OF HARVARD  
COLLEGE, et al.,

Pages 1 to 231

8 Defendants.  
910  
11 TRANSCRIPT OF BENCH TRIAL - DAY 6  
12 BEFORE THE HONORABLE ALLISON D. BURROUGHS  
13 UNITED STATES DISTRICT COURT  
14 JOHN J. MOAKLEY U.S. COURTHOUSE  
15 ONE COURTHOUSE WAY  
16 BOSTON, MA 0221017  
18  
19  
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21  
22 JOAN M. DALY, RMR, CRR  
23 Official Court Reporter  
24 John J. Moakley U.S. Courthouse  
25 One Courthouse Way, Room 5507  
Boston, MA 02210  
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1       **Q.** Well, let's make it more specific.

2               You have described Harvard's racial diversity as --  
3               and I have it written down here -- a vibrant level of racial  
4               diversity, correct?

5       **A.** That sounds right.

6       **Q.** Harvard has made a decision to have a vibrant level of  
7               racial diversity, correct?

8       **A.** Right.

9       **Q.** Harvard's made a decision that in order to have a vibrant  
10               level of diversity it considers race as a factor in the  
11               admissions process, correct?

12      **A.** Correct.

13      **Q.** Now, you agree that Harvard as an interest in achieving  
14               that vibrant level of diversity, correct?

15      **A.** Not the specific level that they have today, but in  
16               general, yes, they have an interest in achieving racial  
17               diversity.

18      **Q.** Fair enough. I understand what you're saying. So let's  
19               set aside the specific level.

20      **A.** Right.

21      **Q.** You agree that Harvard as an interest in having a vibrant  
22               level of diversity, correct?

23      **A.** So I guess the word "vibrant" is a little amorphous, but  
24               I think it has a compelling interest in getting the  
25               educational benefits of a diverse university.

1 Q. I'm using "vibrant" only because it was your word, but  
2 let's use "compelling."

3 Harvard has a compelling interest in having a  
4 diverse community, correct?

5 | **A.** Yes.

6 Q. Diverse along racial lines, corrects?

7 A. Among the many factors, yes.

8     **Q.** Racial, ethnic, religious, political, socioeconomic, it  
9     has a compelling interest in being diverse across all of  
10    those different factors, correct?

11     **A.** "Compelling" is kind of a term of art in this field. So  
12     I'm not sure all of those things -- I think the Supreme Court  
13     has spoken to compelling interest in diversity.

14 Q. I said it was vibrant because it was your word. I was  
15 trying to use "compelling" because it was your word.

16                   But to be precise, at least as we focus on race,  
17                   you agree that Harvard has a compelling interest in having  
18                   racial diversity on its campus?

19 | A. There, we will agree, yes.

20 Q. Now, and you agree that there are educational benefits to  
21 having racial diversity on campus, correct?

22 **A.** Correct.

23 Q. And I think you told us it not only matters on campus, it  
24 matters in our society, correct?

25 | **A.** That's correct.

1       **Q.** It matters, if I have it written down correctly -- if I  
2 have your words written down correctly, it matters to our  
3 democracy, correct?

4       **A.** That's correct.

5       **Q.** Now, you know that Harvard considers race as one factor  
6 among many in its admissions process, correct?

7       **A.** I do.

8       **Q.** For some applicants, race is used as a plus factor,  
9 correct?

10       **A.** That's correct.

11       **Q.** Now, you told Her Honor you have a law degree, correct?

12       **A.** I have a law degree, yes.

13       **Q.** In your report -- you gave us two reports, an opening  
14 report and a rebuttal report, correct?

15       **A.** There are actually three.

16       **Q.** Three. I'm sorry. I apologize.

17                    In your rebuttal report, you specifically referred  
18 to the *Bakke* decision, do you not?

19       **A.** I don't remember specifically, but it sounds right.

20       **Q.** Turn, if you would, to Tab 10 in your notebook, which is  
21 your rebuttal report. And I'd like to go to page 14,  
22 Footnote 55. This is your rebuttal report, correct?

23       **A.** That's correct.

24       **Q.** I'm putting page 14 on the screen, correct?

25       **A.** Yes.